

COMMISSIONER'S DIRECTIVE #22

January 2004

(NOTE: This document is applicable only for transactions that took place during the period of January 1, 2004 through March 17, 2004. See Commissioner's Directive #23 for transactions that take place after March 17, 2004)

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Delivery and Installation Charges Subject to Indiana Sales and Use Tax

I. INTRODUCTION

Effective January 1, 2004, Indiana enacted legislation to bring Indiana's sales and use tax statutes into conformity with the Streamlined Sales and Use Tax Agreement.

II. STATUTORY CHANGES

P.L. 257-2003 amended IC 6-2.5-1-5 concerning the definition of "gross retail income". The amendment includes delivery and installation in the definition of gross retail income.

III. DELIVERY CHARGES

Delivery charges are now included in gross retail income and subject to tax regardless of shipping terms. Delivery that is made by or on the behalf of the seller of tangible personal property will be taxable whether or not the delivery charge is separately stated.

IV. INSTALLATION CHARGES

- A. An installation charge is defined as a charge to add something new or different to tangible personal property. Before January 1, 2004, installation charges that were separately stated were generally not subject to Indiana sales tax. Effective January 1, 2004, installation charges by a seller to install tangible personal property are subject to Indiana sales tax, even if the installation charges are separately stated.

- B. Installation charges billed and furnished by a third party are exempt.
- C. If the tangible personal property that is sold is not subject to sales tax because of an available exemption, then the installation charges will not be subject to sales tax.
- D. Charges to incorporate tangible personal property into a permanent attachment to real property are not subject to sales tax. An improvement to realty takes place whenever tangible personal property is permanently attached to land or attached to a structure that is permanently attached to land. Such charges are not subject to sales tax regardless of whether the contract is a "lump sum" contract or a "time and materials" contract.
 - 1. Examples of non-taxable installations that constitute improvements to realty are: doors, garage doors, garage door openers, windows, cabinets, garbage disposals, water heaters, water softeners, alarms, furnaces, central air conditioning units, gutters, and carpeting.
 - 2. Examples of taxable installations that do not constitute improvements to realty are: personal computers, home stereos, televisions, refrigerators, stoves, dishwashers, garbage compactors, washers, dryers, and window air conditioning units.
NOTE: The purchase and installation of new home appliances does not constitute repair or replacement per Section V below.

Example 1. A department store sells drapes and charges to install them. The drapes are taxable and the installation charge is also taxable.

Example 2. A department store sells blinds, but an independent contractor does the installation and bills the customer directly. The installation charge is not taxable because it is not part of the sales price.

Example 3. A store sells and installs modular workstations. Two separate contracts are drawn up by the store. One contract is for the sale of the workstations, and one for the installation. Sales tax applies to both the sale and the installation. Separate invoices do not make the installation exempt.

Example 4. An individual purchases running boards for their truck from an auto parts dealer and takes them to an unrelated dealership to have them installed. The charge to install the running boards is not taxable because the transaction between the dealership and the individual did not include the sale of the property being installed.

Example 5. An individual takes their car to a dealership to have a sunroof added to their car. The installation charges are taxable even if they are separately stated because it is an addition to tangible personal property.

V. REPAIR/REPLACEMENT CHARGES

Repair Charges. Repair charges are charges to restore an item so that it can be used for its original purpose. Separately stated charges for repair services are not taxable. Labor charges for replacement items are also not subject to sales tax.

Example 6. The charge to reupholster a sofa is \$500 (\$200 material, \$300 labor). The labor is for removing the old fabric and replacing it with new fabric. Since the sofa is being restored to its original form, tax will only be charged on the \$200 for material, if the material and labor charges are separately stated.

Example 7. A person takes their car to be repaired as the result of an automobile accident. The repair or replacement of fenders, auto glass (etc) will require that the sales tax be paid on the materials that are replaced or repaired, but the labor will be exempt if it is separately stated.

Replacement Charges. Replacement charges are charges for replacing an item that is part of another item of tangible personal property. Charges to install replacement items are exempt from tax if they are separately stated. Replacement charges will not be subject to tax even if the replacement item were to be considered an "upgrade." In order to be considered an upgrade, an item must be of the exact same nature as the item it is replacing.

Example 8. A person has the oil and filter changed on their car. The oil and filter are taxable, but the charge to install them is exempt if it is separately stated.

Example 9. A person has the heating element on a clothes dryer replaced. The heating element is taxable, but the labor to install the element is exempt if separately stated.

Example 10. A person has a new set of after market wheels installed on their car. The installation charges are not subject to tax because the wheels are considered an upgrade.

Example 11. A person has a new car stereo with a cd player installed in their car. The original stereo did not have a cd player. The charges to install the new stereo with a cd player would not be subject to sales tax because the new stereo is still of the exact same nature as the car's original stereo even though it has additional capabilities.

Example 12. A person has a subwoofer installed in their car. The charges to install the subwoofer are subject to sales tax because it is additional equipment and not a replacement or upgrade.

A handwritten signature in black ink, reading "Kenneth L. Miller". The signature is written in a cursive style with a horizontal line underneath.

Kenneth L. Miller
Commissioner